

**From:** [Garyg Miller](#)  
**To:** [Barbara Nann](#); [Dipanjana Bhattacharya](#); [Kevin Shade](#); [Susan Roddy](#)  
**Cc:** [Carlos Sanchez](#)  
**Subject:** Fw: Gulfco deficiency letter  
**Date:** 06/09/2010 04:51 PM  
**Attachments:** [Document.pdf](#)

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FYI

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----- Forwarded by Garyg Miller/R6/USEPA/US on 06/09/2010 04:50 PM -----

**From:** "Mahley, Bill" <[Bill.Mahley@strasburger.com](mailto:Bill.Mahley@strasburger.com)>  
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**Date:** 06/09/2010 03:52 PM  
**Subject:** Gulfco deficiency letter

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Barbara,

The attached letter is most disappointing.

The Gulfco PRP Group has not missed a single deadline since the Unilateral Administrative Order was issued in 2006. On the other hand, there have been numerous delays by the Agency in reviewing items submitted by the PRP Group under the UAO that have contributed to the duration of this project.

With regard to the Baseline Ecological Risk Assessment, the Group has made a reasoned, cogent and compelling proposal to streamline the RI/FS process by conducting a wetlands sediment removal process in lieu of further ecological study and work on the BERA. The approach would allow the parties to get to a remedy which all seem to agree the data collected at the the Site clearly supports.

The Group, and others retained to assist the Group in this process, travelled to Dallas on May 17 to present and explain the approach and answer all questions posed by the Agency. We clearly expressed the Group's preference for the approach presented. We also said that the Group was prepared to complete the RI/FS



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process under the UAO if the Agency rejected the proposal. Finally, we clearly stated that we were not willing to expend the time, effort and money to follow both paths simultaneously, and we asked the Agency to suspend any outstanding BERA issues until the Agency decided whether to proceed with the Group's proposal.

The Agency promised us a response the following week. The week of May 24 came and went with no response. The week of May 31 came and went with no response. Then yesterday our project engineer received the attached deficiency letter (although it is dated June 1, it was not delivered until June 8). The letter advises Mr. Pastor that the BERA we submitted in May 10 was deficient, and that we have 14 days to correct the deficiencies the Agency believes exist in the May 10 submission.

Today Jim Morriss and I asked for a call with you and Tom Mariani to discuss this letter and the threat to seek civil penalties of \$37,500 per day. Tom was apparently unavailable. The three of us spoke, however, and Jim and I made it clear that our clients can and will spend the effort and money (estimated at \$35,000, plus Dow and Chromalloy's internal time) to address the Agency's BERA comments, but at the risk the Group will be forced to withdraw its removal action proposal. We once again requested a brief suspension of this deadline to allow the Agency to consider and respond to the Group's proposal, and for the Group to address any issues raised by the Agency's response. The suspension is justified by the fact that the two approaches are mutually inconsistent. Additional funds expended to perfect the BERA work plans will be wasted if the parties select the expedited approach. Further, this is an insignificant delay in the overall picture, and is entirely within EPA's authority to grant.

We ask that the deficiently letter be withdrawn, and that the deadline to address concerns with the Group's May 10 BERA submission be suspended pending the decision on the wetlands sediment removal alternative.

Best regards,  
Bill Mahley

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